

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTHONY REAVES

Petitioner,

v.

CASE NO. 06-15084

HON. LAWRENCE P. ZATKOFF

GERALD HOFBAUER,

Respondent.

_____ /

ORDER TRANSFERRING CASE

Respondent moves to transfer the Petition for Writ of Habeas Corpus to the United States Sixth Circuit Court of Appeals because the instant action constitutes a “second of successive petition” under 28 U.S.C. § 2244(b). Petitioner has pursued a previous habeas action challenging this same conviction. Petitioner's prior habeas action was denied on the merits on August 14, 2006. *See* Docket #6, Ex. A.

Under 28 U.S.C. § 2244(b)(3), State prisoners seeking to file a second or successive request for a writ of habeas corpus must first request from the Court of Appeals an order authorizing the district court to entertain the second or successive request. When a State prisoner files his second or successive petition directly in the district court, the district court *must* transfer the petition to the Court of Appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir.1997).

In this case, Petitioner’s prior petition counts as “prior petition” under § 2244(b) because it was not dismissed on exhaustion grounds. *See In re Wilson*, 142 F.3d 939 (6th Cir. 1998). Accordingly, because the present petition was filed in this Court without first obtaining authorization from the Court of Appeals, the case must be transferred there. Therefore,

IT IS ORDERED that this petition be transferred to the Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 8, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 8, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290